

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of)  
HONE HEKE CORPORATION, )  
dba EXPEDITIONS )  
For a General Rate Increase. )  
\_\_\_\_\_)

DOCKET NO. 2008-0026

DECISION AND ORDER

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

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FILED

<sup>2</sup>In re Hone Heke Corp., dba Expeditions, Docket No. 6736, filed on November 5, 1990 (certificate of public convenience and necessity granted to Hone Heke ("CPCN")).

(2) between Maalaea Harbor, Maui, and Manele Harbor, Lanai. Hone Heke's water carrier operations are subject to the commission's jurisdiction. The two vessels utilized by Hone Heke to serve both routes are capable of carrying 149 and 108 passengers, respectively.

A.

Procedural Background

On February 11, 2008, Hone Heke filed its Notice of Intent to file a general rate increase application, pursuant to HAR § 6-61-85(a).<sup>3</sup> On June 27, 2008, Hone Heke filed its Application based on the 2008 calendar test year, seeking the commission's approval to: (1) increase its fares for certain of its passenger classifications; and (2) establish two new passenger classifications and corresponding fares, designated as Guest-Adult and Guest-Child, for passengers who are guests of the Four Seasons Hotels on Maui and Lanai. Hone Heke does not seek to increase any of its fares associated with the transportation of property. Hone Heke also represents that it does not seek to establish or implement any type of fuel surcharge.<sup>4</sup>

Hone Heke's present and proposed fares for each passenger classification are as follows:

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<sup>3</sup>Notice of Intent; and Certificate of Service, filed on February 11, 2008.

<sup>4</sup>See Commission's letters, dated April 25 and 28, 2008.

<u>Classification</u>	<u>Present Fare</u>	<u>Proposed Fare</u>	<u>Proposed Increase</u>	<u>Percentage Increase</u>
Regular Adult	\$25.00	\$30.00	\$5.00	20%
Regular Child	\$20.00	\$20.00	None	None
Resident Senior	\$10.00	\$10.00	None	None
Kamaaina Adult	\$20.00	\$25.00	\$5.00	25%
Kamaaina Child	\$10.00	\$10.00	None	None
Community/ Religious Group	\$10.00	\$10.00	None	None
Kamaaina Coupon Book	6 tickets/ \$100.00	6 tickets/ \$125.00	6 tickets/ \$25.00	25%
Commercial Employer	\$15.00	\$20.00	\$5.00	33%
Guest-Adult* (Four Seasons Hotel)	\$25.00	\$30.00	\$5.00	20%
Guest-Child* (Four Seasons Hotel)	\$20.00	\$20.00	None	None

\*Formerly a sub-set of the Regular Adult and Regular Child Passenger Classifications, respectively.

Note: Consistent with Hone Heke's tariff, its Present Fares are listed exclusive of the general excise tax it assesses per fare. As part of its Application, Hone Heke seeks to list its Proposed Fares, above, inclusive of the general excise tax per fare.

By Order dated August 7, 2008, the commission suspended Hone Heke's Application for further review and investigation, and stated its intent to hold public meetings on the islands of Maui and Lanai to provide interested persons with the opportunity to comment on Hone Heke's Application.<sup>5</sup>

Public meetings were held by the commission on August 28 and 29, 2008, in Kahului, Maui, and Lanai City, Lanai, respectively. Hone Heke responded to the commission's information requests on September 15, 2008.

On September 26, 2008, the Consumer Advocate submitted its Direct Testimony, in lieu of a position statement.<sup>6</sup> On

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<sup>5</sup>Order Suspending Application, filed on August 7, 2008.

<sup>6</sup>Consumer Advocate's Direct Testimony; Exhibit; and Certificate of Service, filed on September 26, 2008 (collectively, "CA-T-1").

October 2, 2008, Hone Heke filed its Rebuttal Testimony, in lieu of a position statement.<sup>7</sup>

B.

Public Comments

Representatives from Hone Heke and the Consumer Advocate appeared and testified at the public meetings. Individuals from the general public also appeared and testified.

Hone Heke's representative as well as the individuals from the general public who testified all spoke in support of Hone Heke's request to increase its fares.<sup>8</sup> In addition, written petitions supporting Hone Heke's request to increase its fares were submitted by Hone Heke and a Lanai resident.<sup>9</sup>

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<sup>7</sup>Hone Heke's Rebuttal Testimony; and Certificate of Service, filed on October 2, 2008 (collectively, "HH-RT-1").

<sup>8</sup>At the Maui public meeting, Sea Link of Hawaii, Inc.'s representative testified in support of Hone Heke's request to increase its fares, while at the Lanai public meeting, five individuals testified in support of Hone Heke's request, including representatives from Lanai Community Hospital, Lanai Cancer Fund, and Castle and Cooke, Inc.

As part of the public comment process, Hone Heke was also recognized by members of the general public for providing discounted or complimentary fares in certain situations, as a public service. In response to PUC-IR-202, Hone Heke represents that during 2007: (1) the total number of discounted fares it provided was "very small," approximately 0.21 percent of all passengers carried; and (2) the total number of complimentary transfers between Lahaina and Manele was likewise less than one percent, i.e., approximately 0.94 percent, of all passengers carried. Hone Heke also notes that the discounted and complimentary transfers are reported by Hone Heke to the commission in the water carrier's quarterly operating statistics report.

<sup>9</sup>Hone Heke's representative submitted two petitions, containing approximately 376 and 32 respective signatures, while

C.

Hone Heke's Position

Hone Heke notes that since the commencement of its water carrier operations in 1990, it has not increased its fares. Nonetheless, despite its best efforts throughout the ensuing years to improve its operational and fuel efficiencies, cost increases related to fuel, insurance, wages and benefits, and other operational expenses, together with the subsidization of its passenger operations by its other operations, necessitates an increase in certain of its passenger fares. In particular: (1) for the calendar year ending 2007, Hone Heke reported a net operating loss of \$103,830; and (2) for the calendar year ending 2008, Hone Heke projects a net operating loss of approximately \$113,670, without the requested increase in its fares.

D.

Consumer Advocate's Position

The Consumer Advocate recommends that the commission expeditiously approve Hone Heke's request to increase certain of its rates and to establish two new passenger classifications and corresponding fares. In support of its position, the Consumer Advocate states that: (1) Hone Heke only proposes to increase the rates for four of its eight passenger fares; (2) the proposed increase for each passenger classification is less than \$5 per fare (i.e., a "modest" increase); (3) Hone Heke's request constitutes the water carrier's first rate adjustment since it

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the Lanai resident submitted a petition containing approximately 325 signatures.

received its CPCN in 1990, a period of approximately eighteen years; (4) Hone Heke's ferry service is largely used by tourists visiting the neighbor islands and the State of Hawaii is experiencing a downturn in visitor counts in recent months; and (5) consumers have other means of traveling between the islands of Maui and Lanai, and also have the option of not traveling between these two islands. Based on its review of Hone Heke's financial and other information, the Consumer Advocate concludes that Hone Heke's requests are reasonable.<sup>10</sup>

E.

Hone Heke's Reply

In its Rebuttal Testimony, Hone Heke comments on the Consumer Advocate's discussion of the water carrier's non-regulated operations (allocation) and rate base (accumulated depreciation and working cash). In addition, Hone Heke notes that it now has "actual data for the first eight months of this year[,] and a review of this data confirms that Hone Heke's costs are exceeding its revenues."<sup>11</sup> Thus, "it is critical for Hone Heke to receive the rate increase as soon as possible and well before the end of the year."<sup>12</sup>

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<sup>10</sup>The Consumer Advocate analyzes and discusses Hone Heke's revenue, expense, and rate base projections, including the water carrier's non-regulated operations, and its requested rate of return, and ultimately concludes that Hone Heke's requests are reasonable. See CA-T-1, Section IV, at 7-27.

<sup>11</sup>HH-RT-1, at 7.

<sup>12</sup>HH-RT-1, at 8.

Hone Heke concludes by requesting that the commission "grant the rate increase request as soon as possible so that it can continue to provide a very necessary and valuable service to the public."<sup>13</sup>

## II.

### Discussion

HRS § 271G-16 provides in relevant part:

**Rates, fares and charges of common carriers by water.** (a) It shall be the duty of every water carrier of passengers to provide safe and adequate service, equipment, and facilities for the transportation of passengers and to establish, observe, and enforce just and reasonable rates, fares, and charges, and just and reasonable regulations and practices relating thereto, and to the issuance, form, and substance of tickets, the carrying of personal, sample, and excess baggage, the facilities for transportation, and all other matters relating to or connected with the transportation of passengers.

(b) It shall be the duty of every water carrier of property to provide safe and adequate service, equipment, and facilities for the transportation of property and to establish, observe, and enforce just and reasonable rates, charges, and classifications, and just and reasonable regulations and practices relating thereto, and to the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, and all other matters relating to or connected with the transportation of property.

(c) All charges made for any service rendered by any water carrier in the transportation of passengers or property or in connection therewith shall be just and reasonable, and every unjust and unreasonable charge for such service or any part thereof, is prohibited and declared to be unlawful. It shall be unlawful for any water carrier to make, give, or cause any undue or unreasonable preference or advantage to

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<sup>13</sup>HH-RT-1, at 8.



any particular person, locality, region, district, island, or description of traffic, in any respect whatsoever; or to subject any particular person, locality, region, district, island, or description of traffic to any unjust discrimination or undue or unreasonable prejudice or disadvantage in any respect whatsoever; provided that this subsection shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description.

(d) Any person or body politic may make complaint in writing to the commission that any such rate, fare, charge, rule, regulation, or practice, in effect or proposed to be put into effect, is or will be in violation of this section. Whenever, after hearing, upon complaint or in an investigation on its own initiative, the commission shall be of the opinion that any individual rate, fare, or charge, demand, charged, or collected by any common carrier or carriers by water for transportation, or any rule, regulation, or practice whatsoever of the carrier or carriers affecting such rate, fare, or charge or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory or unduly preferential or unduly prejudicial, it shall determine and prescribe the lawful rate, fare, or charge or the maximum or minimum or maximum and minimum rate, fare, or charge thereafter to be observed, or the lawful rule, regulation, or practice thereafter to be made effective.

(e) In the exercise of its power to prescribe just and reasonable rates, fares, and charges for the transportation of passengers or property by water carriers, and to prescribe classifications, regulations, and practices relating thereto, the commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic by the carrier or carriers for which the rates are prescribed; to the need, in the public interest, of adequate and efficient transportation service by the carriers at the lowest cost consistent with the furnishing of the service; and to the need of revenues sufficient to enable the carriers, under honest, economical, and efficient management, to provide the service.

(f) Nothing in this section shall be held to extinguish any remedy or right of action not inconsistent herewith.

HRS § 271G-16 (boldface in original).

HRS § 271G-17 states in relevant part:

**Tariffs of water carriers.** (a) Every water carrier shall file with the public utilities commission, and print, and keep open to public inspection, tariffs showing all the rates, fares, and charges for transportation, and all services in connection therewith, of passengers or property. The rates, fares, and charges shall be stated in terms of lawful money of the United States. The tariffs required by this section shall be published, filed, and posted in such form and manner, and shall contain such information as the commission by regulations shall prescribe; and the commission may reject any tariff filed with it which is not in consonance with this section and with the regulations. Any tariff so rejected by the commission shall be void and its use shall be unlawful.

(b) No change shall be made in any rate, fare, charge, or classification, or any rule, regulation, or practice affecting the rate, fare, charge, or classification, or the value of the service thereunder, specified in any effective tariff of a water carrier, except after forty-five days' notice of the proposed change filed and posted in accordance with subsection (a); provided that changes to a fuel surcharge approved by the commission may be made after thirty days' notice of the proposed change filed and posted in accordance with subsection (a). The notice shall plainly state the change proposed to be made and the time when it will take effect. The commission may in its discretion and for good cause shown allow the change upon notice less than that herein specified or modify the requirements of this section with respect to posting and filing of tariffs either in particular instances or by general order applicable to special or peculiar circumstances or conditions.

(c) No water carrier shall engage in the transportation of passengers or property unless the rates, fares, and charges upon which the same are transported by the carrier have been filed and published in accordance with this chapter.

(d) Whenever there is filed with the commission any schedule stating a new rate, fare, or charge, for the transportation of passengers or

property by a water carrier or any rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the carrier may on its own initiative, or shall by order of the commission served prior to the effective date of the schedule, concurrently file a pro forma statement of account which shall be prepared under the same form and in the same manner as prescribed by the commission's uniform system of accounts.

The commission may upon complaint of any interested person or upon its own initiative at once and, if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, enter upon a hearing concerning the lawfulness of the rate, fare, or charge, or the rule, regulation, or practice, and pending the hearing and the decision thereon the commission, by delivering to the carrier or carriers affected thereby a statement in writing of its reasons therefor, may suspend the operation of the schedule and defer the use of the rate, fare, or charge, or the rule, regulation or practice. From the date of ordering a hearing to investigate the lawfulness of the rate, fare, or charge, the commission shall have up to six months to complete its investigation. If the commission fails to issue a final order within the six-month period then the changes proposed by the carrier shall go into effect. At any hearing involving a change in a rate, fare, charge, or classification, or in a rule, regulation, or practice, the burden of proof shall be upon the carrier to show that the proposed changed rate, fare, charge, classification, rule, regulation, or practice, is just and reasonable.

(e) When a rate increase application is filed, . . . .

HRS § 271G-17 (boldface in original) (emphasis added).<sup>14</sup>

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<sup>14</sup>In addition, HRS § 271G-23(a) provides:

**Hearings.** (a) All hearings, investigations, and proceedings shall be governed by chapter 91 and by rules of practice and procedure adopted by the public utilities commission, and in the conduct thereof, the technical rules of evidence need not be applied; provided that in all evidentiary hearings conducted pursuant to chapter 91 in which a carrier has the burden of justifying the

Hone Heke is a Hawaii corporation that is wholly-owned by fourteen employee shareholders. Hone Heke's Application represents its first request for a general rate increase since the commencement of its water carrier operations in 1990. Hone Heke has been operating at a loss since 2007, and its financial condition is largely attributable to the increases in its operating costs, including fuel, insurance, and labor costs,<sup>15</sup> despite the water carrier's efforts in implementing various operational and fuel efficiencies, including the use of more fuel efficient vessels. Hone Heke estimates that its Application, if approved by the commission, will generate approximately \$584,915 in additional operating revenues, and will "allow [it] to operate at a profit again and allow it to carry passengers at a profit on a per passenger basis instead of at a loss."<sup>16</sup> Moreover, Hone Heke expresses its commitment to maintaining the financial integrity of its operations, consistent with the public interest of providing water carrier transportation service between the

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reasonableness of its rates, fares, charges, or classifications, the burden of proof of the carrier in proving the reasonableness of expenditures, contracts, leases, or other transactions between the carrier and corporate affiliates of the carrier shall be satisfied only if the reliable, probative and substantial evidence is clear and convincing. No informality in any hearing, investigation, or proceeding, or in the manner of taking testimony shall invalidate any order, decision or rule made, approved, or confirmed by the commission.

HRS § 271G-23(a) (boldface in original).

<sup>15</sup>See Application, Exhibit 2, Fuel Price Changes: January 2000 to June 2008; see also written comments of Hone Heke's representative, Mr. Bill Caldwell, dated August 28 and 29, 2008, submitted at the Maui and Lanai public meetings.

<sup>16</sup>Application, at 11 and Exhibit 10; and CA-T-1, at 8.

islands of Maui and Lanai, primarily for the Lanai residents.<sup>17</sup> In addition, the residents and businesses of Maui and Lanai that either testified at one of the public meetings, submitted written comments, or signed the petitions, overwhelmingly support Hone Heke's request to increase its fares. Lastly, the Consumer Advocate supports the expeditious approval of Hone Heke's requests.

Based on the foregoing reasons, the commission finds that Hone Heke's requests to increase certain of its passenger fares and to establish two new passenger classifications and corresponding fares appear just and reasonable. Accordingly, the commission approves Hone Heke's Application.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. Hone Heke's application for a general rate increase and other matters, filed on June 27, 2008, is approved,

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<sup>17</sup>According to Hone Heke's vice president and general manager:

Q. Is the future direction clear?

A. Absolutely. We are focused on our company's health. That means continuing our primary commitment to the residents of Maui County with a particular emphasis on the people of Lana'i. They rely on us to be their primary mode to cross the channel for food, supplies and family visits. We take that responsibility seriously, and so we are dedicated to maintaining a healthy company, employees, and fleet.

Application, Exhibit 11, at 11.

and will take effect upon the filing of its revised tariff sheets.

2. Hone Heke shall promptly submit its revised tariff sheets with the applicable issued and effective dates, which incorporate: (A) its new fare structure; and (B) the two new passenger classifications (Guest-Adult and Guest-Child, for passengers who are guests of the Four Seasons Hotels on Maui and Lanai).

3. Upon the filing of Hone Heke's revised tariff sheets, this docket is closed unless ordered otherwise by the commission.

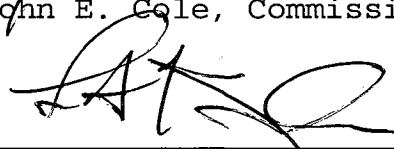
DONE at Honolulu, Hawaii OCT 10 2008.


PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By   
Carlito P. Caliboso, Chairman

By   
John E. Cole, Commissioner

APPROVED AS TO FORM:

  
By  
Leslie H. Kondo, Commissioner

  
Michael Azama  
Commission Counsel

2008-0026.cp

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

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